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Application No. 10/511,023
Filed: October 8, 2004
TC Art Unit: 3736
Confirmation No.: 8760

REMARKS

In this Office Action on this application claims 1-10, 14-20 and 23-36 were specifically rejected over Crabb under §102. Claims 35, 36, 39-48 and 56-66 were commented on in that section but were not part of this statutory rejection. Similarly claims 11-13, 21 and 22 were rejected under §103 while claims 49-51, 37, 38 and 68-70 were commented on. Claims 52-55 and 67 received no comment or basis for rejection. Claim 65 is amended in response to §112 issues but the reported problems with the claims 1 and 37 could not be found.

Nevertheless to further the prosecution this response will treat all claims as rejected on bases the best that can be assumed.

Claims 1 and 39 are independent and are treated as rejected under Crabb under Section 102. This rejection is strenuously traversed. Even giving latitude to a recent PTO policy to use this broadest interpretation that can be supported by claim language, there is no teaching or suggestion in Crabb of the limitation in claims 1 to: (1) "balance information signal"; (2) stimulation control signal" and its generating means, and (3) at least one stimulator".

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The Examiner argues Crabb shows a balance signal, but the metes and bounds of Crabb are empty of that term or anything that means the same. A balance signal requires some front to back information or forces sensed as clearly used in the present description yet Crabb has a signal processor 20a devoid of any function for dealing with balance information, using only magnitude.

Similarly Crabb lacks applicants stimulation function. To reinforce this point, claims 1 and 39 have been amended to make it clear that stimulation is to a body surface part. Crabb only shows a unit 20, hung on the outside of a boot and incapable of body surface stimulation.

No suggestion occurs in Crabb that could lead to a finding of obviousness for these claim limitations.

The Examiner uses hindsight throughout this rejection, such as for example "the stimulation control signals are capable of ..."; "is capable of feedback stimulation..."; "capable of being mounted in a stacking..."; "capable of being secured on the head..."; "capable of stimulation a sole..."; "capable of determining an angle ..."; "capable of magnitude of an angle..."

Independent claim 39 also stands rejected on Crabb under §102. In addition to the remarks above regarding stimulation

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absent from Crabb, Crabb also fails to teach or show any means for sensing a body angle. Again the Examiner's "capable of" language is unsupported by the Crabb teaching and even with hindsight re-engineering fails to suggest this invention.

The use of "capable of" language is not applicable in a section 102 rejection. Nevertheless the above arguments also did distinguish Crabb on any obviousness basis.

Claims 11-13, 21 and 22 stand rejected over Crabb in view of Andrews. Crabb is admitted to lack electrodes wired into the skin. Andrews, however, provides only a system to block neural activities, an "electrical nerve block for clinical use" such as to reduce spasticity and the like. Since Applicants electrical signals are applied as a stimulus, the teaching of Andrews is completely opposite. Furthermore Andrews would not be looked to by those skilled in the art for suggestions for use in a system operating to achieve a completely opposite goal. Andrews fails to disclose a skin inserted stimulating signal.

Claims 37 and 38 are rejected over Crabb with Andrews using Confer's number. The Examiner, however discusses only Crabb and Confer in the rejection. Accordingly this rejection is being treated as Crabb with Confer. Confer is solely a sensor system and not a combined sensor and stimulator system so adds nothing

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beyond Crabb. Thus one skilled in the art would not look to Confer for suggestions on a stimulator system for maintaining balance. More particularly claims 37 and 38 do not require the stimulation be at least in part a function of ankle angle. This is nowhere taught or suggested in Crabb or Confer.

Finally claims 68-70 are rejected on Crabb with Brown. Again Brown is a stationary console used to determine the parameters for orthotics not for stimulation signals and thus does not teach stimulation missing from Crabb. As such one skilled in the art would not look to Brown for a suggestion for use in a stimulator system as Brown seeks a completely different result.

The Examiner is encouraged to telephone the undersigned

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attorney to discuss any matter that would expedite allowance of
the present application.

Respectfully submitted,

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